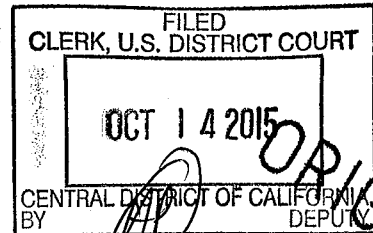


1 MICHAEL MEDLIN (Full Name)
 2 ☐ Individually
 3 ☒ d/b/a AFFORDABLE AUTOGRAPHS.COM (Business Name)
 4 BIGRED1769@GMAIL.COM (Email Address)
 5 5936 CARLTON WAY #11 (Address Line 1)
 6 HOLLYWOOD, CA 90028 (Address Line 2)
 7 1-818-668-0068 (Phone Number)



ORIGINAL

8 Defendant in Pro Per

9
 10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12 BARRY ROSEN,

13 Plaintiff,

14 vs.

15 MICHAEL MEDLIN
 16 _____
 17 _____
 18 _____,

19 Defendant(s).

Case No.: 2:15-CV-05789-ODW(JCX)

**MEMORANDUM OF POINTS
 AND AUTHORITIES IN
 SUPPORT OF MOTION TO SET
 ASIDE ENTRY OF DEFAULT
 PURSUANT TO FED. R. CIV. P.
 55(c)**

Hearing Date: 11/16/2015

Hearing Time: 1:30pm

Judge: WRIGHT
 (Judge's name)

Place: Courtroom 11
 (courtroom number)

24 Defendant respectfully submits this Memorandum of Points and Authorities
 25 in Support of Defendant's Motion to Set Aside Entry of Default.

26 //

27 //

28
 Revised: August 2013
 Form Prepared by Public Counsel.
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1 **I. INTRODUCTION**

2 The Court should set aside entry of default against Defendant pursuant to
3 Fed. R. Civ. P. 55(c) because there is good cause for Defendant's delay in
4 appearing in this action. Defendant (name): MICHAEL MEDLIN appears
5 pro se on behalf of (check one):

6 ☐ Defendant only.

7 ☒ Defendant individually and doing business as Defendant's
8 unincorporated sole proprietorship, (name of business): AFFORDABLE AUTOGRAPHS.COM
9

10
11 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

12 Plaintiff filed ^{an Amended Complaint} a lawsuit against Defendant on (date): 9/10/15.

13 According to the Proof of Service on file with this Court, Defendant was served
14 on (date): 9/11/15. The Court entered default against Defendant
15 on (date): OCT 8 2015.

16 Defendant became aware of the ^{amended complaint} lawsuit on (date): 10/10/15 (approx.).

17 (Decl. of Defendant ¶ 3.) Defendant found out about the lawsuit because
18 ^{amended complaint} he received motion to enter default papers
19

20 Defendant took the following actions in response to the ^{amended complaint} lawsuit (include
21 specific dates): I FILED AN ANSWER ON SEPT 2ND 2015.
22 I have never received the amended complaint.
23

24 ¹ Courts have recognized that a sole proprietorship may appear pro se. See *United*
25 *States v. Hagerman*, 545 F.3d 579, 581 (7th Cir. 2008) (holding that a sole
26 proprietorship may appear *pro se*, but a limited liability company may not) (citations
27 omitted); see also *Clark v. Amazon.com*, 2007 U.S. Dist. LEXIS 34314, at *1 (E.D.
28 Cal. May 10, 2007) and *Crossbow Tech., Inc. v. YH Tech.*, 2007 U.S. Dist. LEXIS
8028, at *2 (N.D. Cal. Jan. 22, 2007) (noting that plaintiff, a sole proprietorship, was
proceeding *pro se*).

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_____ . (Decl. of Defendant ¶ 4.)

Defendant did not file a response to the lawsuit with the Court on time for the following reasons: I DID NOT RECIEVE ANY MAZL NOTIFYING ME THAT I HAD TO FILE AN ANSWER A SECOND TIME. I never received the amended complaint.

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5. (Decl. of Defendant ¶ 5.) The following facts support Defendant's defenses to this lawsuit:

6 I FOUND IMAGES OF ALI LANDRY ON GOOGLE, WHICH
7 IS PUBLIC DOMAIN. THE IMAGE HAD NO WATERMARK
8 ON IT FOR COPYRIGHT. I PRINTED THE SAID IMAGE TO
9 GET IT AUTOGRAPHED AND BE SOLD AS AN AUTOGRAPHED PHOTO.
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20 (Decl. of Defendant ¶ 6.)

21 III. ARGUMENT

22 Federal Rule of Civil Procedure 55(c) provides that an entry of default may
23 be set aside upon a showing of good cause. Fed. R. Civ. P. 55(c). The Ninth
24 Circuit's good cause standard for setting aside entry of default is the same as that
25 for setting aside default judgment under Rule 60(b), but the test for setting aside
26 entry of default is less rigid and is more generous to the party in default.

27 *Franchise Holding II, LLC v. Huntington Rests. Group, Inc.*, 375 F.3d 922, 925
28 (9th Cir. 2004).

1 The Court considers three factors when deciding whether to set aside
 2 default: (1) whether the defendant's culpable conduct led to the default; (2)
 3 whether the defendant has a meritorious defense; and (3) whether setting aside
 4 default would prejudice the plaintiff. *Id.* at 925-26. In addition, "[t]he law does
 5 not favor defaults," and "therefore, any doubts as to whether a party is in default
 6 should be decided in favor of the defaulting party." *Bonita Packing Co. v.*
 7 *O'Sullivan*, 165 F.R.D. 610, 614 (C.D. Cal. 1995).

8
 9 **A. Defendant's Delay in Responding to the Lawsuit was Not**
 10 **Culpable.**

11 In the Ninth Circuit, analysis of "culpability" for the purposes of
 12 demonstrating "good cause" under Rule 55(c) overlaps with the standard for
 13 "excusable neglect" under Rule 60(b)(1). *TCI Group Life Ins. Plan v. Knoebber*,
 14 244 F.3d 691, 696 (9th Cir. 2001) (questioned on other grounds); *also see*
 15 *Meadows v. Dominican Republic*, 817 F.2d 517, 522 (9th Cir. 1987) (finding that
 16 the conduct of defendants in district court was culpable because defendants were
 17 aware of federal law, and their intentional failure to respond to the action was not
 18 excusable neglect). The Ninth Circuit finds a negligent failure to respond
 19 excusable if the defaulting party offers a credible, good-faith explanation for the
 20 delay that negates "any intention to take advantage of the opposing party, interfere
 21 with judicial decision-making, or otherwise manipulate the legal process."
 22 *Knoebber*, 244 F.3d at 697-98. Further, in analyzing culpability, the Court may
 23 consider a defendant's exigent personal matters, his mental state, and his lack of
 24 familiarity with legal matters. *See id.* at 699 (finding defendant's delay in
 25 response not culpable because she was grieving the death of her husband and was
 26 not familiar with the legal system).

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1 While Defendant did not file a response with the Court in time, Defendant's
2 conduct was excusable because: He never received the
3 amended complaint.
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1 Defendant had no intent to gain an advantage over the opposing party or to
 2 delay legal proceedings. As Defendant's delay in response was due to excusable
 3 neglect, the Court should find that Defendant's conduct was not culpable.

4
 5 **B. Defendant Has a Meritorious Defense to the Lawsuit.**

6 A defense is considered meritorious if "there is some possibility that the
 7 outcome of the suit after a full trial will be contrary to the result achieved by the
 8 default." *Hawaii Carpenters' Trust Funds v. Stone*, 794 F.2d 508, 513 (9th Cir.
 9 1986). All that is required is an assertion of "a factual or legal basis that is
 10 sufficient to raise a particular defense; the question of whether a particular factual
 11 allegation is true is resolved at a later stage." *Audio Toys, Inc. v. Smart AV Pty*
 12 *Ltd.*, 2007 U.S. Dist. LEXIS 44078, *8 (N.D. Cal. June 6, 2007).

13 Defendant has the following defenses to this lawsuit:

14 (Explain your defenses to the lawsuit and include supporting facts.)

15
 16 I HAVE MET MANY AUTOGRAPH COLLECTORS THAT TAUGHT
 17 ME HOW TO DO THIS BUSINESS. I JUST FOLLOWED IN
 18 THEIR FOOT STEPS. SELLING AUTOGRAPHED PHOTOS IS
 19 A MULTI - MILLION DOLLAR BUSINESS. AND AS FAR AS I
 20 KNEW THAT WHAT I DID LIKE EVERYONE ELSE WAS OK.
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15 If Defendant prevails on these defenses, the outcome would be contrary to
16 the result achieved by default. Therefore, Defendant has set forth a meritorious
17 defense and satisfies the second good cause factor.

18
19 **C. Plaintiff Will Not Suffer Prejudice If Entry of Default Is Set
20 Aside.**

21 Prejudice is determined by whether a party will be hindered in pursuing its
22 claim. See *Knoebber*, 244 F.3d at 701. The fact that a party may be denied a
23 quick victory is not sufficient to deny relief from default judgment. *Bateman v.*
24 *United States Postal Service*, 231 F.3d 1220, 1225 (9th Cir. 2000). "The delay
25 must result in tangible harm such as loss of evidence, increased difficulties of
26 discovery, or greater opportunity for fraud or collusion." *Audio Toys*, 2007 U.S.
27 Dist. LEXIS at *9.
28

1 Allowing the case to move forward on the merits after only a short delay
2 should not prejudice Plaintiff's ability to litigate its case. The only prejudice that
3 might result to Plaintiff by a denial of default judgment is that Plaintiff will not be
4 able to ensure an easy victory. As no prejudice will result to Plaintiff in
5 reopening this case, the third and final good cause factor is satisfied.

6 Defendant is ready and willing to litigate this lawsuit. Defendant's delay
7 in responding was not culpable, Defendant has meritorious defenses, and Plaintiff
8 will not suffer any prejudice in pursuing its claims if default is set aside.
9 Therefore, Defendant has met the good cause standard of Rule 55(c) and this
10 Court should set aside the entry of default against him.

11 **IV. CONCLUSION**

12 Based on the above reasons, this Court should grant Defendant's motion.

13
14 DATED: 10/14/15

By:

(sign)

(print name)

Defendant in Pro Per